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Notice of Allowability	Application No.	Applicant(s)	
	10/608,559	MURDIN ET AL.	
	Examiner	Art Unit	
	Jennifer E. Graser	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/6/04.
2. ☒ The allowed claim(s) is/are 8-11,26-28,35 and 39-46.
3. ☒ The drawings filed on 30 June 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|---|---|

HC

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michele Simkin on February 17, 2005. Claims 8-11, 26-28, 35, and 39-46 are allowed.

The application has been amended as follows:

In claim 8, line 1, the word "comprising" was changed to "consisting essentially of".

In claim 10, line 2, the word "a" before 'nucleic' was deleted and replaced with "an isolated".

In claim 10, line 3, the word "comprising" was changed to "consisting essentially of".

In claim 26, line 2-3, the word "a" before 'nucleic' was deleted and replaced with "an isolated".

2. The following is an examiner's statement of reasons for allowance:

The specification defines "isolated polynucleotide" at page 13, lines 6-29; the claims do not encompass naturally occurring products such as a genome or a whole chromosome or a bacterial cell. To expedite prosecution, Applicants agreed to the amendments set forth above. The transitional phrase "consisting essentially of" limits

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the scope of a claim to the specified materials or steps and those that do not materially affect the basic and novel characteristics of the claimed invention. Accordingly, the claimed vaccine vector and composition may include other ingredients or nucleotide sequences besides the promoter operatively linked to the sequence encoding SEQ ID NO:2, 4 and 6 that do not materially affect the basic and novel characteristics of the composition. Non-limiting examples of such other nucleotide sequences are described at page 28, lines 21-28 of the specification. Claim 46 encompasses these additional nucleotide sequences.

Kalman et al (Nat. Genet. 21(4) : 385-389. 1999) teaches the entire genome of *C.pneumoniae*. A nucleic acid sequence which was **10,421** nucleotides in length had a local match to Applicant's SEQ ID NO:1. However, the reference does not identify this portion as an open reading frame. Kalman fails to identify any ORFS which would encode the full-length sequences of SEQ ID Nos: 2, 4, or 6. Griffais (US 6,559,294 B1). et al teach the genome of *Chlamydia pneumoniae*, as well as some open reading frames for some specified proteins. There are local matches across the *C.pneumoniae* genome which are 99% identical to Applicants' SEQ ID Nos: 1, 3 and 5. However, the genome taught by Griffais is 1,230,025 nucleotides in length and Griffais fails to identify any ORFS which would encode the full-length sequences of SEQ ID Nos: 2, 4, or 6. SEQ ID NO: 776 of Griffais is 68% identical to SEQ ID NO: 2. Those of ordinary skill in the art would not be able to determine which portion of the 1,230,025 length genome taught by Griffais et al would encode the proteins described in the instant application

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since they were not identified in the reference. Accordingly, a combination of Kalman and Griffais does not teach or suggest the claimed invention

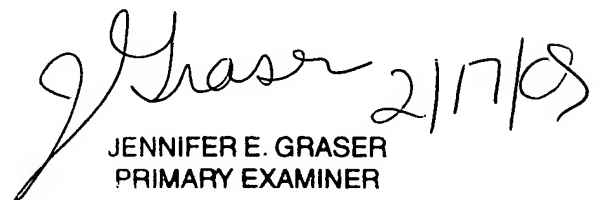
3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is 571-273-8300 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.

 2/17/08
JENNIFER E. GRASER
PRIMARY EXAMINER